

SUBCHAPTER A : GENERAL INFORMATION

§330.1. Declaration and Intent.

(a) The regulations promulgated in this chapter cover all aspects of municipal solid waste management under the authority of the Texas Water Commission and are based primarily on the stated purpose of Texas Civil Statutes, Health and Safety Code, Chapter 361, as amended, hereafter referred to as the Texas Solid Waste Disposal Act. The owner or operator of a municipal solid waste landfill (MSWLF) facility shall comply with any other applicable Federal rules, laws, regulations, or other requirements.

(b) All permits, including any special provisions therein, issued by the Texas Water Commission or the Texas Department of Health shall remain in force after October 9, 1993, the effective date of this chapter. To the extent that a standard has been changed by this chapter, the permittee may continue to operate under standards contained in previously issued permits, except for those requirements mandated by United States Environmental Protection Agency 40 Code of Federal Regulations, Parts 257 and 258, as amended, which implement certain requirements of Subtitle D of the Resource Conservation and Recovery Act (RCRA). For those federally mandated requirements, the permittee is under an obligation to apply for a change to his permit in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit Modification), as applicable, to incorporate the required standard. The application shall be submitted no later than April 9, 1994. Timely submission of a request for a permit change qualifies the owners or operators of existing MSWLF units for interim status. MSWLF facility owners or operators with interim status are treated as having been issued a permit modification or amendment until the executive director makes a final determination on the permit modification request or the commission makes a final determination on the permit amendment request. Facility owners or operators with interim status must comply with the requirements of this chapter upon the effective date of this chapter.

(c) A permit or license shall be required for each MSW unit, and the executive director, at his/her discretion, may include one or more different types of units in a single permit if the units are located at the same facility.

(d) Materials extraction or gas - recovery operations shall not be conducted unless a permit for such purpose has been obtained from the commission in accordance with §330.4 of this title (relating to Permit Required).

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

100-Year flood - A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

Acid - A substance containing hydrogen that will release hydrogen (hydronium) ions when dissolved in water. Acids will have a pH of less than 7.0 and usually have a sour taste and will cause blue litmus dye to turn red.

Active life - The period of operation beginning with the initial receipt of solid waste and ending at certification/ completion of closure activities in accordance with §§330.250-330.253 of this title (relating to Closure and Post-Closure).

Active portion - That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.250-330.253 of this title (relating to Closure and Post-Closure).

Airport - A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

Aquifer - A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

Areas susceptible to mass movements - Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

Asbestos-containing materials - Include the following:

(A) Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable ACM means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable ACM means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

ASTM - The American Society of Testing and Materials.

Battery - An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

- (A) primary batteries (dry cells);
- (B) storage or secondary batteries;
- (C) nuclear and solar cells or energy converters; and
- (D) fuel cells.

Battery acid (also known as electrolyte acid) - A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

Battery retailer - A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

Battery wholesaler - A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

Bird hazard - An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

Brush - Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

Buffer zone - A zone free of municipal solid waste processing and disposal activities adjacent to the site boundary.

CFR - Code of Federal Regulations.

Citizens' collection station - A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles). The facility may consist of one or more storage containers, bins, or trailers.

Class I industrial solid waste - See Industrial Solid Waste.

Collection - The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

Collection system - The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment and management; and operating procedures. Systems are classified as municipal, contractor, or private.

Commercial solid waste - All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Commission - The Texas Water Commission and its successors.

Compacted waste - Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

Composite liner - A liner system consisting of two components: the upper component must consist of a minimum 30-mil flexible membrane liner (FML) or minimum 60-mil high-density polyethylene (HDPE), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The FML component must be installed in direct and uniform contact with the compacted soil component.

Compost - The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

Composting - The controlled biological decomposition of organic materials through microbial activity.

Conditionally exempt small-quantity generator - A person who generates no more than 220 pounds of hazardous waste in a calendar month.

Construction-demolition waste - Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

Contaminate - The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of ground or surface water.

Controlled burning - The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

Discard - To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than Discharge burned or incinerated) in lieu of or prior to being disposed.

Discharge - Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

Discharge of dredged material - Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

Discharge of fill material - The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

Discharge of pollutant - Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

Displacement - The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

Disposal - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

Dredged material - Material that is excavated or dredged from waters of the United States.

Drinking-water intake - The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

Elements of nature - Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

Endangered or threatened species - Any species listed as such pursuant to the Federal Endangered Species Act, §§4, 16 United States Code (USC) 1536, as amended or pursuant to the Texas Endangered Species Act.

EPA - United States Environmental Protection Agency.

Essentially insoluble - Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 CFR 141, Subparts B and G, and 40 CFR 143 for total dissolved solids.

Executive director - The executive director of the Texas Water Commission and successors, or a person authorized to act on his behalf.

Existing MSWLF unit - Any municipal solid waste landfill unit that received solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

Experimental project - Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

Facility - All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

Fault - A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

Fill material - Any material used for the primary purpose of filling an excavation.

Floodplain - The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

Garbage - Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Gas condensate - The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

Generator - Any person, by site or location, whose act or process produces a solid waste or first causes it to become regulated.

Ground water - Water below the land surface in a zone of saturation.

Hazardous waste - Any solid waste identified or listed as a hazardous waste by the administrator of EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 USC, §6901 et seq, as amended.

Holocene - The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

Household waste - Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include yard waste or brush that is completely free of any household wastes.

Industrial hazardous waste - Hazardous waste determined to be of industrial origin.

Industrial solid waste - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class I industrial solid waste or class I waste is any industrial solid waste designated as Class I by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class I Waste Determination).

(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class II Waste Determination).

(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class III Waste Determination).

Inert material - A naturally occurring non-putrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

In situ - In natural or original position.

Karst terrain - An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

Lateral expansion - A horizontal expansion of the waste boundaries of an existing MSWLF unit.

Land application of solid waste - The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

Leachate - A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

Lead - The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

Lead acid battery - A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

License - A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

Liquid waste - Any waste material that is determined to contain "free liquids" as defined by EPA Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

Litter - Rubbish and putrescible waste.

Lower explosive limit - The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

Man-made inert material - Those non-putrescible, essentially insoluble materials fabricated by man that are not included under the definition of rubbish.

Medical waste - Waste generated by health care related facilities and associated with health care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health care activities.

Monofill - A landfill or landfill trench into which only one type of waste is placed.

MSWLF - Municipal Solid Waste Landfill Facility.

Municipal hazardous waste - Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, EPA.

Municipal solid waste (MSW) - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

Municipal solid waste facility (MSW facility) - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

Municipal solid waste landfill unit (MSWLF unit) - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

Municipal solid waste site (MSW site) - A plot of ground designated or used for the processing, storage, or disposal of solid waste.

Navigable waters - The waters of the United States, including the territorial seas.

New MSWLF unit - Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

Nonpoint source - Any origin from which pollutants emanate in an unconfined and unchannelled manner, including, but not limited to, surface runoff and leachate seeps.

Non-RACM - Non-regulated asbestos-containing material as defined in 40 CFR 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

Nuisance - Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of ground water or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare.

Open burning - The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

Operate - To conduct, work, run, manage, or control.

Operating record - All plans, submittals, and correspondence for a MSWLF facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

Operation - A municipal solid waste site or facility is considered to be in operation from the date that solid waste is first received or deposited at the municipal solid waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

Operator - The person(s) responsible for operating the facility or part of a facility.

Opposed case - A case when one or more parties appear, or make their appearance, in opposition to an application and are designated as Opponent Parties by the hearing examiner either at or before the public hearing on the application.

Other regulated medical waste - Medical waste that is not included within special waste from health care related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to 25 TAC Chapter 289 (relating to Radiation Control).

Owner - The person who owns a facility or part of a facility.

PCB - Polychlorinated biphenyl molecule.

PCB Waste(s) - Those PCBs and PCB Items that are subject to the disposal requirements of 40 CFR 761. Substances that are regulated by 40 CFR 761 include, but are not limited to: PCB Articles, PCB Article Containers, PCB Containers, PCB-Contaminated Electrical Equipment, PCB Equipment, PCB Transformers, Recycled PCBs, Capacitors, Microwave ovens, electronic equipment, and light ballasts and fixtures.

Permit - A written permit issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a specified municipal solid waste storage, processing, or disposal facility in accordance with specific limitations.

Person - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Point of compliance - A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the permitted facility.

Point source - Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

Pollutant - Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

Pollution - The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

Poor foundation conditions - Areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

Population equivalent - The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste

disposal facility is three cubic yards. For the purposes of these sections, the following population equivalents shall apply:

(A) 8,000 persons-20 tons per day or 60 cubic yards per day;

(B) 5,000 persons-12 1/2 tons or 37 1/2 cubic yards per day;

(C) 1,500 persons-3 3/4 tons or 11 1/4 cubic yards per day;

(D) 1,000 persons-225 pounds of wastewater treatment plant sludge per day (dry-weight basis).

Post-consumer waste - A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

Premises - A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

Processing - Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize such waste, or to recover energy or material from the waste, or to render such waste nonhazardous or less hazardous; safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. Unless the executive director determines that regulation of such activity under these rules is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the administrator of EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 USC 6901 et seq, as amended.

Public highway - The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

Putrescible waste - Organic wastes, such as garbage, waste-water treatment plant sludge, and grease trap waste, that is capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or is capable of providing food for or attracting birds, animals, and disease vectors.

Qualified ground-water scientist - A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in ground-water hydrology and related fields as may be demonstrated by State registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective action.

RACM - Regulated asbestos-containing material as defined in 40 CFR 61, as amended, includes: Friable asbestos material, Category I nonfriable ACM that has become friable; Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

Radioactive waste - Waste that requires specific licensing under 25 TAC Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation), Health and Safety Code, and the rules adopted by the commission under that law.

RCRA - Resource Conservation and Recovery Act.

Recyclable material - A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Recycling - A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

Refuse - Same as Rubbish.

Registration - The act of filing information for specific solid waste management activities that do not require a permit, as determined by this chapter.

Regulated hazardous waste - A solid waste that is a hazardous waste as defined in 40 CFR, Part 261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR, Part 261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

Relevant point of compliance - See Point of compliance.

Resource recovery - The recovery of material or energy from solid waste.

Resource recovery site - A solid waste processing site at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

Rubbish - Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes

glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

Run-off - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on - Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Salvaging - The controlled removal of waste materials for utilization, recycling, or sale.

Saturated zone - That part of the earth's crust in which all voids are filled with water.

Scavenging - The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

Scrap tire - Any tire that can no longer be used for its original intended purpose.

Seasonal high water table - The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any ground-water characterization studies at a site.

Septage - The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

Shall - The stated action is mandatory.

Should - The stated action is recommended as a guide in completing the overall requirement.

Site - Same as facility.

Site development plan - A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

Site operating plan - A document, prepared by the design engineer in collaboration with the site operator, that provides guidance to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations throughout the life of the site in a manner consistent with the engineer's design and the commission's regulations.

Site operator - The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

Sludge - Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

Small MSWLF - A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

Solid waste - garbage, rubbish, refuse, sludge from a waste-water treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of EPA under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 USC, §6901 et seq).

Special waste - Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under §§335.401-335.412 of this title (relating to Household Materials Which Could Be Classified as Hazardous Waste);

(B) class I industrial nonhazardous waste not routinely collected with municipal solid waste;

(C) special waste from health care related facilities (refers to certain items of medical waste);

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 CFR, Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR, §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals;

(O) used oil;

(P) light ballasts and/or small capacitors containing polychlorinated biphenyl (PCB) compounds;

(Q) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility permitted under this chapter;

(R) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(S) any waste stream other than household or commercial garbage, refuse, or rubbish;

(T) lead acid storage batteries; and

(U) used-oil filters from internal combustion engines.

Special waste from health care related facilities - Includes animal waste, bulk human blood, blood products, body fluids, microbiological waste, pathological waste, and sharps as defined in 25 TAC §1.132 (relating to Definitions).

Stabilized sludges - Those sludges processed to significantly reduce pathogens, by processes specified in 40 CFR, Part 257, Appendix II.

Storage - The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere. Facilities established as a neighborhood collection point for nonputrescible recyclable wastes, as a collection point for consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks, or for accumulation of used or scrap tires prior to transportation to a processing or disposal site are considered examples of storage facilities. Storage includes operation of pre-collection and post-collection as follows:

(A) pre-collection-That storage by the generator, normally on his premises, prior to initial collection;

(B) post-collection-That storage by a transporter or processor, at a processing site, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

Storage battery - A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

Store - To keep, hold, accumulate, or aggregate.

Structural components - Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

Surface impoundment - A facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, or lagoons.

Surface water - Surface water as included in water in the state.

SWDA - Texas Solid Waste Disposal Act.

TACB - Texas Air Control Board and its successors.

Texas Civil Statutes - Vernon's Texas Revised Civil Statutes Annotated.

Transfer station - A fixed facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

Transportation unit - A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

Transporter - A person who collects and transports solid waste; does not include a person transporting his or her household waste.

Trash - Same as rubbish.

Treatment - Same as processing.

Triple rinse - To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

TWC - Texas Water Commission.

Uncompacted waste - Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

Unified soil classification system - The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

Unconfined water - Water that is not controlled or impeded in its direction or velocity.

Unit - Municipal solid waste landfill unit.

Unstable area - A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

Uppermost aquifer - The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Vector - An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

Washout - The carrying away of solid waste by waters.

Waste management unit boundary - A vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Waste-separation/intermediate-processing center - A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

Waste-separation/recycling facility - A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

Water in the state - Ground water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Water table - The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

Waters of the United States - All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

Wetlands - As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

Yard waste - Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Adopted November 2, 1994

Effective December 20, 1994

§330.3. Applicability.

(a) The provisions of this chapter apply to any person as defined in §330.2 of this title (relating to Definitions) involved in any aspect of the management and control of municipal solid waste including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person who by contract, agreement, or otherwise, arrange to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity.

(b) For Municipal Solid Waste Landfills that stopped receiving waste before October 9, 1991 and MSW Sites, only the provisions of §330.251 of this title (relating to Closure Requirements for MSWLF Units That Stop Receiving Waste prior to October 9, 1991 and MSW Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that municipal solid waste landfill facility (MSWLF) units or MSW Site(s), or portions thereof, have received final cover.

(c) MSWLF units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this chapter except for the final cover requirements specified in §330.252 of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, but Stop Receiving Waste prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.250-330.253 of this title (relating to Closure and Post-Closure). Owners or operators of MSWLF units described in this subsection that fail to complete cover installation and certification within the time limits specified in §§330.250-330.256 of this title (relating to Closure and Post-Closure) will be subject to all the requirements of these regulations.

(d) All MSWLF units and MSW Sites that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

(e) Owners or operators of new, existing, and lateral expansions of small MSWLF units that dispose of less than 20 tons of municipal solid waste daily in the small MSWLF unit based on an annual average are exempt from §§330.200-330.206 and §§330.230-330.242 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action respectively), so long as there is no evidence of existing ground-water contamination from the small MSWLF unit, the small MSWLF unit serves a community that has no practicable waste management alternative, and the small MSWLF unit is located in an area that receives less than or equal to 25 inches of annual average precipitation. Requests for exemptions under subsection (f) of this section may be approved administratively by the executive director, upon demonstration of compliance with these criteria. An exemption request may be denied by the executive director if he determines that granting the exemption could result in a substantial threat of ground-water contamination, based upon information made available to him from the applicant or agency files. Owners or operators may appeal such denials to the commission for decision.

(f) Owners or operators of new, existing, and lateral expansions of small MSWLF units that meet the criteria in subsection (e) of this section must submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification must be signed by a principal executive officer, a ranking elected official, or an independent professional engineer registered to practice in

the State of Texas, except that the ground-water certification shall be submitted in accordance with §330.14 of this title (relating to Arid Exemption Process) and signed by a qualified ground-water scientist, as defined in this chapter. The certification shall contain the following information:

(1) a certification that the MSWLF unit meets all requirements contained in subsection (e) of this section for exemptions from §§330.200-330.206 and §§330.230-330.242 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action respectively);

(2) a report, prepared by a qualified ground-water scientist in accordance with §330.14 of this title (relating to Arid Exemption Process) documenting that there is no evidence of ground-water contamination;

(3) documentation that the small MSWLF unit receives for disposal an annual average of less than 20 tons per day based upon the most recent four reporting quarters; or a certification that programs have been put in place, or will be implemented to reduce the annual average to less than 20 tons per day within one year;

(4) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

(A) additional costs of available alternatives are estimated to exceed 1.0% of the owner's or operating community's budget for all public services; or

(B) haul distances to alternative sites are unreasonably long; or

(C) all other alternatives are not feasible to implement, given the community location and economic condition;

(5) documentation that the small MSWLF unit receives less than or equal to 25 inches of average annual precipitation, as determined from the following map (Map 1) based on average annual precipitation for the years 1951-1980, or from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

(g) If the owner or operator of a new, existing, or lateral expansion of a small MSWLF unit who has previously asserted eligibility in subsections (e) and (f) of this section has knowledge or becomes aware of ground-water contamination from the small MSWLF unit within a one-mile radius of the small MSWLF unit, or the unit no longer meets the definition of a small MSWLF, or the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with §§330.200-330.206 and §§330.230-330.242 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action, respectively) on a schedule specified by the executive director. The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance. The minimum time allowed for compliance necessitated by loss of small MSWLF status or availability of a practicable alternative shall be 18 months.

(h) Financial assurance requirements contained in §§330.280-330.286 of this title (relating to Financial Assurance) shall become effective April 9, 1994. Until that date, owners or operators of municipal solid waste facilities are required to comply with the financial assurance requirements of §330.9 of this title (relating to Financial Assurance Required).

(i) A small MSWLF facility that meets the requirements of subsections (e) and (f) of this section shall maintain the integrity of any existing on-site ground-water monitor wells and make them available to the executive director for the collection of ground-water samples.

§330.4. Permit Required.

(a) No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste unless such activity is authorized by a permit or other authorization from the Texas Water Commission, except as provided for in subsections (c) through (h) of this section. Permits issued by the Texas Department of Health prior to the effective date of this chapter satisfy the requirements of this subsection. No person may commence physical construction of a new municipal solid waste management facility or a lateral expansion without first having submitted a permit application in accordance with §§330.50-330.65 of this title (relating to Permit Procedures) and received a permit from the commission, except as provided for specifically herein.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director may seek recourse against not only the person who stored, processed, or disposed of the waste but also against the transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) A separate permit is not required for the storage or processing of municipal solid waste that is grease trap wastes, grit trap wastes, or septage that contains free liquids if the waste is treated/processed at a permitted MSWLF. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(d) A permit is not required for a municipal solid waste transfer station facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

- (1) a municipality with a population of less than 50,000;
- (2) a county with a population of less than 85,000; or
- (3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons per day or less.

(e) A request for registration for sites or facilities exempted from permits under subsections (c) and (d) of this section shall be submitted in a format provided by the executive director and shall include all information requested thereon and any additional information considered necessary by the applicant or that may be requested by the executive director.

(f) A permit or registration under this chapter is not required for a facility or site that is used as: a citizens' collection station; as a collection and processing point for nonputrescible recyclable wastes or for composting of leaves, grass clippings, or wood chips; a collection point for parking-lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; or for the disposal of soil, dirt, rock, sand, or other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. A permit or registration is not required for a baling operation at a recycling or materials recovery facility that handles only nonputrescible recyclable waste. Facilities that process recyclable wastes that contain more than incidental amounts of putrescible waste must apply for a permit or registration as applicable under subsections (a), (d) or (q) of this section.

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted municipal solid waste site, or composting facility at an existing permitted municipal solid waste site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Requirements of an Application for Registration of Solid Waste Facilities (Type V)). Failure to operate such registered facilities in accordance with the requirements established in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for the revocation of the registration.

(h) A permit is not required for a site or facility where the only operation is the storage and/or processing of used and scrap tires as provided for in §§330.801-330.889 of this title (relating to Management of Whole Used or Scrap Tires). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with §330.53 of this title (relating to Technical Requirements of Part II of the Application). Failure to operate such registered facilities in accordance with the requirements established in §330.801-330.889 of this title (relating to Management of Whole Used or Scrap Tires) may be grounds for the revocation of the registration.

(i) A permit or registration under this chapter is not required for the operation of an approved treatment process unit (as provided in §330.1004(c)(1) of this title, relating to Generators of Medical Waste) used only for the treatment of on-site (as defined in §330.1004(f)) generated special waste from health care related facilities.

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(k) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste per month and that transports its own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million or;

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(l) A permit is not required for an on-site medical waste incinerator used by a licensed hospital for incineration of only on-site generated medical wastes.

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit Modification). The owner or operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50-330.65 of this title (relating to Permit Procedures) to address the items covered by the requested change.

(n) For materials extraction and gas recovery operations relating to municipal solid waste, a permit is required. However, exploratory and test operations for feasibility purposes may be conducted after approval of the operation by the executive director.

(o) Submission of a Soil and Liner Evaluation Report (SLER) and/or a Flexible Membrane Liner Evaluation Report (FMLER) required by §330.206 of this title (relating to Soil and Liner Evaluation Report and Flexible Membrane Liner Evaluation Report) for a liner design which meets all design and operational requirements of §§330.50 - 330.65 of this title (relating to Permit Procedures) and §§330.200-330.206 of this title (relating to Ground-Water Protection Design and Operation) shall not require a permit amendment or modification.

(p) A permit or registration is not required for the drying of grit trap waste at a car wash facility as long as these wastes are disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to another car wash facility if the facilities have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to pre-empt or supercede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any new municipal solid waste Type V transfer station that includes a material recovery operation that meets all of the requirements established by this subsection. Owners and operators of Type V transfer facilities meeting the requirements of this subsection are allowed to register their operations in lieu of permitting them. Owners and operators of transfer stations that meet the permit exemption requirements and wish to exercise the exemption option must register their operation in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities), meet the additional design criteria of §330.65(f) and operate the facility in accordance with Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites).

(1) Materials recovery. The transfer facility must recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling. The applicant must demonstrate in the

registration application the method that will be used to assure the 10% requirement is achieved. The effective date of this subsection is February 2, 1995.

(2) Distance to a landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining nonrecyclable waste to a landfill not more than 50 miles from the facility.

(3) Exempt facilities. Transfer facilities exempted from a permit under this subsection shall register with the executive director in accordance with §330.65 and meet the additional design criteria of §330.65(f).

(4) Failure to operate such registered facilities in accordance with the requirements established in Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for revocation of the registration.

(5) If registered transfer facilities are operated in a manner which causes or results in a nuisance, as defined in §330.2 of this title (relating to Definitions), and the executive director gives written notice that a nuisance exists, the registered facility shall cease operations and the facility's registration shall be suspended until such time as the facility owner or operator receives written notice of the executive director's determination that the nuisance no longer exists.

(6) As a condition of receipt of a registration by a transfer facility under this subsection, the owner and operator of that facility agrees that if the facility operates in a manner which causes or results in a nuisance as defined in §330.2, and the executive director sends written notice pursuant to paragraph (5) of this subsection, the facility will immediately cease operations until the executive director notifies the facility of its determination that a nuisance no longer exists at the facility and that the facility may be reopened for operation.

(7) If a registered transfer facility is notified that nuisance conditions exist due to the operations of the facility, and that its registration is therefore suspended, the owner or operator of the registered facility may request that the question of whether or not a nuisance exists be decided by the Commission. This request must be in writing and filed within 20 calendar days of receipt of the executive director's written notice of suspension of the registration.

(r) A permit is not required for a municipal solid waste transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the executive director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit.

(s) A permit is not required for a municipal solid waste Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes if:

(1) the facility can attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases and the recovery of food solids for composting, but does not include the recovery of water.

(2) the Type V processing facility is located within the permit boundaries of a commission permitted Type I landfill, or

(3) the Type V processing facility is located at a manned treatment facility permitted under the Texas Water Code, Chapter 26 and which is permitted to discharge at least 1,000,000 gallons per day and which is owned by and operated for the benefit of a political subdivision of this state. Facilities meeting any of these exemptions must obtain a registration by meeting the operational criteria and design criteria established in §330.71 of this title (relating to Registration for Municipal Solid Waste Facilities that Process Grease Trap Waste, Grit Trap Waste, or Septage).

(t) A registration is required for a mobile liquid waste processing facility that processes grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Mobile liquid waste processing facilities must obtain a registration by meeting the operational criteria and design criteria established in §330.72 of this title (relating to Registration of Mobile Liquid Waste Processing Units).

(u) A permit is not required for a municipal solid waste Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.73 of this title (relating to Registration of Demonstration Projects for Liquid Waste Processing Facilities).

Adopted February 5, 1997

Effective March 3, 1997

§330.5. General Prohibitions.

(a) In addition to the requirements of §330.4 of this title (relating to Permit Required), a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste, or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under the Texas Solid Waste Disposal Act, §361.092, in violation of the Texas Solid Waste Disposal Act, or any regulations, rules, permit, license, order of the commission or in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state without obtaining specific authorization for such discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

(b) Municipal solid waste landfill facilities (MSWLFs) failing to satisfy this chapter, unless exempted by this chapter, are considered open dumps for purposes of State solid waste management planning under the Resource Conservation and Recovery Act (RCRA) and are prohibited under RCRA, §4005(a).

(c) A person may not cause, suffer, allow, or permit the dumping of municipal solid waste without the written authorization of the commission.

(d) The open burning of solid waste, except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, or emergency clean up operations as authorized by the commission or executive director as appropriate, is prohibited at any municipal solid waste landfill. The operation of any type of air-curtain destructor (trench burner), other than for the exceptions noted in the previous sentence, is prohibited.

(e) The following waste are prohibited from disposal in any municipal solid waste facility.

(1) A lead acid storage battery shall not be intentionally or knowingly offered by a generator or transporter for disposal at a municipal solid waste landfill or incinerator, and/or shall not be intentionally or knowingly accepted for disposal at any municipal solid waste landfill or incinerator permitted under this chapter.

(A) Each battery improperly disposed of constitutes a separate violation and offense.

(B) A person who violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Solid Waste Disposal Act, as amended.

(2) Do-it-Yourself (DIY) used motor vehicle oil shall not be intentionally or knowingly offered by a generator or transporter for disposal at a municipal solid waste landfill or municipal incinerator, either by itself or mixed with other solid waste, and/or shall not be intentionally or knowingly be accepted for disposal at a municipal solid waste landfill or municipal incinerator permitted under this chapter.

(A) It is an exception to this subsection if the mixing or commingling of used-oil with solid waste that is to be disposed of in a landfill is incidental to, and the unavoidable result of, the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(B) A person who violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Solid Waste Disposal Act, as amended.

(3) Used-oil filters from internal combustion engines shall not be intentionally or knowingly accepted for disposal at landfills permitted under this chapter except as provided in §330.136 of this title (relating to Disposal of Special Wastes).

(4) Whole used or scrap tires shall not be accepted for disposal or disposed of in any municipal solid waste landfill.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) shall not be knowingly accepted for disposal or disposed of in any municipal solid waste landfill unless all the CFC contained in that item is captured and sent to an approved CFC disposal site or recycling facility. If the CFC is not removed from the item, then the whole item must be sent to an approved CFC disposal site. Such items that enter the facility with ruptured lines or holes in the CFC unit shall not be

accepted unless the generator or transporter provides written certification that the CFC has been evacuated from the unit and that it was not knowingly allowed to escape into the atmosphere.

(6) Liquid waste as defined in §330.2 of this title (relating to Definitions) and as described below shall not be disposed of in any MSWLF unit.

(A) Bulk or noncontainerized liquid waste shall not be accepted for disposal or disposed of in a municipal solid waste landfill unless:

(i) the waste is household waste other than septic waste; or

(ii) the waste is leachate or gas condensate derived from the landfill unit and the landfill unit is designed and constructed with a composite liner and a leachate collection system. The owner or operator shall make the procedure for disposal of the leachate or gas condensate a part of the site operating plan.

(B) Containers holding liquid waste shall not be accepted for disposal or disposed of in a municipal solid waste landfill unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designated to hold liquids for use other than storage; or

(iii) the waste is household waste.

(7) Regulated hazardous waste as defined in §330.2 of this title (relating to Definitions) shall not be accepted at a municipal solid waste facility.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations, Part 761, shall not be accepted for disposal or disposed of in a municipal solid waste facility.

(f) MSWLFs receiving sewage sludge and failing to satisfy the criteria of this chapter violate the Federal Clean Water Act, §309 and §405(e).

(g) Contact between solid waste and unconfined waters, which are subject to free exchange with ground water or surface water, is prohibited.

(h) The drilling of any test borings, for any reason, through previously deposited waste or cover material without prior written authorization from the executive director is prohibited.

§330.6. Technical Guidelines.

In order to promote the proper collection, handling, storage, processing, and disposal of municipal solid waste in a manner consistent with the purpose of the Texas Solid Waste Disposal Act and 40 Code of Federal Regulations, Parts 257 and 258 as amended, the executive director will publish technical guidelines

outlining recommended methods designed to aid in compliance with this chapter. The purpose of the guidelines is to provide information that may be of use to site operators in the selection, design, development, and operation of solid waste sites. The procedures outlined in the guidelines are not mandatory except for testing and sampling requirements; however, they are recommended and, in certain cases, may be specifically required by this chapter and/or permit special provisions. The publication of technical guidelines shall not be used to extend the scope or increase the stringency of this chapter. Technical guidelines shall not be applied retroactively.

§330.7. Deed Recordation.

(a) Recording required. A person may not cause, suffer, allow, or permit the disposal of municipal solid waste prior to recording, in the county deed records of the county or counties in which the disposal takes place, a metes and bounds description of the portion or portions of the tract of land on which disposal of solid waste will take place.

(b) Proof of recordation. A certified copy of the recorded document shall be provided to the executive director prior to instituting disposal operations.

(c) Final recording. Upon completion of the disposal operation and final closure of the facility or site, the operator/owner shall file an "Affidavit to the Public" in a form provided by the executive director that includes an updated metes and bounds description of the extent of the disposal areas and the restrictions to future use of the land in accordance with §330.253(e)(8) of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993 and MSW Sites).

§330.8. Notification Requirements.

(a) A person who intends to store, process, or dispose of municipal solid waste without a permit, as authorized by §330.4 of this title (relating to Permit Required), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities, except for recycling and other activities as may be specifically exempted. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is in compliance with the terms of this chapter. Such information may include, but is not limited to, type of waste, waste management methods, facility engineering plans and specifications, and the geology and hydrogeology at the facility. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal solid waste shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning waste type, waste management methods, facility engineering plans and specifications, and geology and hydrogeology at the facility additional to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) A person who stores, processes, or disposes of municipal solid waste shall notify the executive director in writing of any closure activity or activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such

information as may reasonably be required to enable the executive director to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

§330.9. Financial Assurance Required.

The commission may require evidence of financial responsibility as it deems appropriate to assure the commission that the responsible owner or operator has sufficient assets to properly operate the site and to provide proper closure. A firm commitment to provide backup equipment by lease, purchase, or diversion from other activities is part of this responsibility. This assurance for the proper operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, trust funds, or insurance (in the case of privately owned facilities). Commissioners Court or city council resolution, in the case of publicly owned facilities, may be substituted for the required financial assurance, if approved by the commission on April 9, 1994, the provisions of §§330.280-330.286 of this title (relating to Financial Assurance) will supersede this section.

§330.10. Closure.

(a) Any person who stores, processes, or disposes of municipal solid waste at a facility permitted under §330.4 of this title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closure provisions of the permit.

(b) Any person who stores, processes, or disposes of municipal solid waste is subject to the applicable provisions in §§330.250-330.256 of this title (relating to Closure and Post-Closure).

§330.11. Relationships with Other Governmental Entities.

(a) Texas Air Control Board (TACB). All municipal solid waste facility units are subject to the jurisdiction and regulation of TACB with respect to air contaminant emissions. TACB is responsible for the administration and enforcement of its jurisdiction and rules. Applicants for permits for municipal solid waste landfill units and facilities that burn or incinerate solid waste must comply with the applicable requirements of Subchapter Q of this chapter (relating to Memoranda of Agreement and Joint Rules with Other Agencies).

(b) Texas Department of Transportation (TxDOT). In view of the responsibilities of TxDOT regarding the junkyard control provisions of the Texas Litter Abatement Act, the commission shall coordinate with TxDOT on the review of all permit applications for municipal solid waste land disposal facilities existing or proposed within 1,000 feet of an interstate or primary highway to determine the need for screening or special operating requirements. When primary access to a municipal solid waste disposal facility is provided by state-maintained streets or highways, the commission shall solicit recommendations from TxDOT regarding the adequacy and design capacity of such roadways to safely accommodate the additional volumes and weights of traffic generated or expected to be generated by the facility operation.

(c) United States Army Corps of Engineers. In view of the requirements under the Federal Clean Water Act for any person to obtain a permit from the Corps of Engineers prior to discharging any fill materials into navigable waters or contiguous or adjacent wetlands thereof and the requirement under the River and Harbor Act of 1899 for any person to obtain a permit from the Corps of Engineers for any work

and/or structures in or affecting the course, capacity, or condition of any navigable water of the United States, the commission shall coordinate the review of all permit applications for municipal solid waste disposal facilities with the appropriate district engineer to determine the need for such permits.

(d) Federal Aviation Administration (FAA). In view of the potential attraction that solid waste land disposal facilities have to birds and the hazard that birds present to low flying aircraft, the commission shall coordinate the review of permit applications for all municipal solid waste land disposal facilities existing or proposed in the vicinity of airports with the appropriate airport's district office of the FAA (FAA Agency Order 5200.5(A), "FAA Guidance Concerning Waste Disposal Sites on or Near Airport's").

(e) Special districts. The Texas Solid Waste Disposal Act applies to political subdivisions of the state to which the legislature has given waste handling authority for two or more counties. The relationship between the commission and any such waste handling authority will be similar to that between the commission and a county.

(f) Regional planning agencies. The commission will provide educational, technical, and advisory assistance to the various councils of governments and regional planning commissions throughout the state.

(g) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the Solid Waste Disposal Act. The commission is committed to assist municipal governments in an educational and advisory capacity. The commission is a necessary and indispensable party to any suit filed by a local government under the Texas Solid Waste Disposal Act.

(h) County governments. County governments may exercise the authority provided in Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, regarding the management of solid waste including the enforcement of the requirements of the Texas Solid Waste Disposal Act and this chapter. The provisions of Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, allow county governments to require and issue licenses authorizing and governing the operation and maintenance of sites used for the disposal of solid waste not in the territorial or extraterritorial jurisdiction of a municipality. Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, provide that no license for disposal of solid waste may be issued, renewed, or extended without the prior approval of the commission. Under Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, the commission is a necessary and indispensable party to any suit filed by a local government for the violation of any provision of the Act. If a permit is issued, renewed, or extended by the commission, the owner or operator of the site does not need to obtain a separate license for the same site from a county or from a political subdivision as defined in Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364.

(i) Texas Parks and Wildlife Department (TPWD). TPWD has jurisdiction over certain environmental issues that may be involved in municipal solid waste facility permitting, including, but not limited to, endangered species and wetlands. The commission will solicit comments from, and consider information provided by, TPWD.

§330.12. Relationship with County Licensing System.

(a) General procedures. Under the Texas Solid Waste Disposal Act, Chapters 361 and 364, counties are empowered to require and issue licenses authorizing and governing the operation and maintenance of solid

waste disposal sites not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. The county shall mail a copy of the license application to the commission to receive comments and recommendations on the license application before the county acts on the application. No license for the use of a site for the disposal of solid waste may be issued, renewed, or extended without prior approval of the commission. The County Solid Waste Control Act excludes both the territorial limits and the extraterritorial jurisdiction of incorporated cities and towns from county authority to make regulations for the governing and controlling of solid waste collection, handling, storage, and disposal.

(b) Licensing procedures. The following pertain only to those counties that may choose to exercise licensing authority in accordance with the Texas Solid Waste Disposal Act, and the County Solid Waste Control Act.

(1) Licensing authority.

(A) Before exercising licensing authority for municipal solid waste sites, a county government shall promulgate regulations that are consistent with those established by the commission and that have been approved by the commission. A county exercising authority shall use the same evaluation processes as prescribed for use by the commission to include providing appropriate agencies, in accordance with §330.11 of this title (relating to Relationships with Other Governmental Entities) and §§330.50-330.65 of this title (relating to Permit Procedures), an opportunity to review and comment on those applications for which they may have a jurisdictional interest. In view of the technical evaluations and site investigations that must be made by some review agencies, ample time shall be allowed to receive and review agency comments prior to a public hearing. To ensure that review agencies are provided sufficient information on which to base a determination, counties will include in their permit application forms the data requirements as specified in permit applications used by the commission, supplemented by any other requirements deemed necessary by the individual counties.

(B) A county may not make regulations for municipal solid waste management within the extraterritorial or territorial jurisdiction of incorporated cities or towns.

(C) The commission will issue permits for municipal solid waste sites located within the extraterritorial or territorial jurisdiction of incorporated cities or towns within the county.

(D) A county license for a municipal solid waste site may not be issued, extended, or renewed without prior approval of the commission.

(E) Once a license is issued by a county and remains valid, a permit from the commission is not required.

(2) Public meeting. A county shall hold a public meeting and offer an opportunity for a public hearing, and issue appropriate notifications, in accordance with the procedures established in §§330.50-330.65 of this title (relating to Permit Procedures) prior to issuance, amendment, extension, revocation, or renewal of a license.

(c) Duration of a license. The duration of a county license should normally be for the life of the site.

(d) Licensee's responsibilities. Solid waste sites licensed by a county shall be operated in compliance with regulations of the commission and the county.

§330.13. Severability.

If any section or provision of this chapter or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication does not affect any other section or provision of this chapter or the application of the adjudicated section or provision to any other person, situation, or circumstance. The commission declares that it would have adopted the valid portions and applications of this chapter without the invalid part, and to this end the provisions of this chapter are declared to be severable.

§330.14. Arid Exemption Process.

The following process shall be used for meeting the provisions for ground-water certification of the arid exemption, as described in §330.3(f) of this title (relating to Applicability).

(1) Locate and plot the site accurately on a topographic map (7 1/2-minute or 15-minute United States Geological Survey quadrangle). Draw a line to enclose all of the area within one mile of the site boundary (site area).

(2) Visit the site and locate by physical inspection water wells and springs in the site area. Determine the locations and plot them on the topographic map.

(A) If no wells or springs exist within the site area, refer to subsection (7) of this section. Otherwise, refer to subsection (2)(B) of this section.

(B) Determine from appropriate records (for example, water-well drillers, pump installers, City records, underground water conservation district, Texas Water Development Board, Texas Water Commission, United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the site, refer to subsection (7) of this section. Otherwise, refer to subsection (3) of this section.

(3) Determine the ground-water gradient of the shallowest aquifer in the vicinity of the site. This can be done by measuring stabilized water levels in wells completed in the shallowest aquifer in the site area (from subsection (2) of this section) or from previous hydrogeologic studies using contemporaneous stabilized water-level measurements. Care should be taken to measure water levels when nearby high-volume wells, such as irrigation wells, have not been pumped for a long enough period to allow the water level to stabilize. Where no data exist or cannot be determined, the regional gradient can be used.

(4) From springs and from the wells completed in the shallowest aquifer, select the two wells/springs downgradient of and nearest to the site based on the findings from subsection (3) of this section. Select a well/spring upgradient or lateral to the site, where ground-water quality is not likely to have been affected by landfill activities and preferably not by other human activities such as oil and gas operations, feedlots, sewage treatment plants, septic systems, etc.

(5) Sample the three selected wells/springs determined by subsections (3) and (4) of this section in accordance with accepted practices, such as described in technical guidance from the executive director. Have the samples analyzed by a qualified laboratory for the following parameters:

- (A) Chloride;
- (B) Nitrate (as N);
- (C) Sulfate;
- (D) total dissolved solids;
- (E) specific conductance;
- (F) pH;
- (G) Chromium;
- (H) non-purgeable organic carbon;

(I) volatile organic compounds listed in §330.241 of this title (relating to Constituents for Detection Monitoring).

(i) If permission cannot be obtained to sample one or more of the three selected wells/springs, select one or more alternate wells/springs, within the plotted area. If fewer than three wells/springs are available, sample those that are available.

(ii) If permission cannot be obtained to sample any appropriately located wells/springs, submit written documentation of the facts to the executive director. If the executive director confirms that permission cannot be obtained for sampling, the well(s) may be eliminated from consideration.

(6) Compile the data from subsections (1) through (5) of this section in a report comprising:

- (A) map showing all known wells, springs, site boundaries, sampling points, etc.;
- (B) map showing the ground-water gradient and data points;
- (C) chemical analyses, showing analytical methods used;
- (D) logs and construction information for the sampled wells and description and flow rate for sampled springs;
- (E) text describing methods of investigation, such as sampling and water-level measurements; and

(F) conclusions with respect to presence or lack of evidence of ground-water contamination by the site.

(7) Where no wells or springs are present in the site area or the shallowest water level is more than 150 feet below land surface at the site, submit a brief report describing the site (with a map of the area) and the method(s) of determining the lack of appropriate sampling points or depth to the shallowest aquifer. Confirmed absence of sampling points will be deemed to be "no evidence of ground-water contamination."

(8) The report shall be signed and, where appropriate, sealed by the qualified ground-water scientist who reviewed the data and reached the conclusions.

(9) If there is no evidence of groundwater contamination by the landfill, the qualified ground-water professional who reviewed the data and reached the conclusions shall sign and, where appropriate, seal a statement in the following format: I (we) have reviewed the ground-water data described in a report submitted with this certification and have found no evidence that the _____ Municipal Solid Waste Landfill (MSWLF) unit located at _____ has contaminated ground water in the uppermost aquifer.

(10) The executive director may accept information and data, other than that described, as showing that there is no evidence of ground-water contamination by the landfill, if the information and data are deemed to be adequate for such a determination.

§330.15. Effective Date.

For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a change to his permit in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit Modification), as applicable, to incorporate the required standard. The application shall be submitted no later than 6 months from the effective date of the required standard.